

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

MARTEZ POWELL,)	
)	
Petitioner,)	
)	
vs.)	No. CIV-14-765-W
)	
JOE ALLBAUGH, ¹)	
)	
Respondent.)	

ORDER

On March 29, 2016, United States Magistrate Judge Shon T. Erwin issued a Report and Recommendation in this matter and recommended that the Court grant the Petition for Writ of Habeas Corpus ("Petition") filed by petitioner Martez Powell, proceeding pro se. The parties were advised of their right to object, see Doc. 17 at 18, but no objections have been filed within the allotted time.

Upon review of the record,² the Court concurs with Magistrate Judge Erwin's finding that Powell be permitted to withdraw his blind plea of guilty entered on May 3, 2013, in Case No. CF-2012-1394 in the District Court for Cleveland County, Oklahoma. Powell

¹In his Petition for Writ of Habeas Corpus, petitioner Martez Powell named as the respondent "Cleveland County;" he also identified the Attorney General of the State of Oklahoma ("Attorney General"). See Doc. 1. In an Order issued on September 24, 2014, United States Magistrate Judge Shon T. Erwin advised that the respondent in this matter should be Robert Patton, then Director of the Oklahoma Department of Corrections ("ODOC"), see Doc. 11 at 1 n.1, and that Cleveland County and the Attorney General should be dismissed. See id.

In his Report and Recommendation issued on March 29, 2016, Magistrate Judge Erwin has advised that Joe Allbaugh, who is Acting Director of ODOC, should now be substituted as respondent. See Doc. 17 at 1 n.1. Accordingly, the Court DIRECTS the Clerk of the Court to substitute Allbaugh for all other respondents in this matter and to reflect that substitution on the docket.

²Because the parties are familiar with the events giving rise to this matter and because Magistrate Judge Erwin has outlined in the Report and Recommendation the issues and the state court proceedings that require remand, the Court has not repeated the same in the instant Order.

pleaded guilty to one (1) count of Lewd or Indecent Acts as to a Child Under 16, in violation of 21 O.S. § 1123(A)(2), and nine (9) counts of Child Sexual Abuse, in violation of 21 O.S. § 843.5(E). He was sentenced on July 24, 2013, to a total term of incarceration of seventy-five (75) years. Because the State of Oklahoma breached the plea agreement when it recommended at the sentencing hearing a term of imprisonment for each victim, which resulted in a sentence that exceeded the plain language of that agreement, Powell is entitled to relief on Ground One in his Petition.³

Accordingly, the Court

(1) ADOPTS the Report and Recommendation [Doc. 17] issued on March 29, 2016;

(2) conditionally GRANTS Powell's Petition as to Ground One to the extent stated herein and in accordance with Magistrate Judge Erwin's findings and recommendation;

(3) REMANDS this matter to the District Court for Cleveland County, Oklahoma, so that Powell may withdraw his blind plea of guilty in Case No. CF-2012-1394 and ADVISES the parties that a writ of habeas corpus shall issue unless Powell is permitted to withdraw his plea in that case within 120 days hereof;


(4) DIRECTS respondent Allbaugh to notify the Court in writing no later than August 22, 2016, of the status of Powell's state court proceedings;

(5) DIRECTS the Clerk of the Court to send a certified copy of this Order to the state court to which this matter is remanded; and

³As Magistrate Judge Erwin suggested, because relief is warranted as to Ground One in Powell's Petition to the extent it is based on a breach of the plea agreement, the Court has not addressed the remaining claims of error in Ground One or Powell's arguments asserted in Grounds Two and Three of the Petition.

(6) further DIRECTS the Clerk to administratively terminate this action in her records until further Order of the Court.

ENTERED this 21st day of April, 2016.



LEE R. WEST
UNITED STATES DISTRICT JUDGE